MONTANA LEGISLATIVE HISTORY

Chapter 541 1995

Bill H _____ S 357 Original bill & history ____C

H. Committee on Fish & Game			S. Committee on Natural Resources & Fish & Game		
Hearing Date(s)	Mar 05	✓ C	Hearing Date(s)	Feb 18	✓ C
	Mar 12	✓ C		_____	____C
	_____	____C		_____	____C
	_____	____C		_____	____C
Date Out	Mar 12	✓ C			

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Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

Senate BILL NO. 397

INTRODUCED BY Murphy by request

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTIONS 26-904, 26-906, 26-915, 26-916, 26-918, 26-919 AND 26-920, R.C.M. 1947, RELATING TO THE LICENSING AND REGULATION OF OUTFITTING AND GUIDING OF HUNTING AND FISHING PARTIES WITHIN THE STATE OF MONTANA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 26-904, R.C.M. 1947, is amended to read as follows:

"26-904. Who deemed outfitter. For the purpose of this act, the word "outfitter" shall mean any person or persons, company or corporation who shall engage in the business of outfitting for hunting or fishing parties, as the term is commonly understood, who shall for consideration provide any saddle or pack animal or animals or personal service for hunting or fishing parties, camping equipment, vehicles or other conveyance except boats for any person or persons to hunt, trap, capture, take or kill any game, or who shall for consideration furnish a boat or other floating craft and accompany any person or persons for the purpose of catching fish, or who shall aid or assist any person or persons in locating or pursuing any game animal. The providing of the above mentioned services, property or equipment shall be conclusively presumed to have been for consideration for purposes of this act if the same, or any thereof, are provided by any person, company or corporation for more than two (2) parties or two (2) other persons during any calendar year or on more than two (2) occasions during any such calendar year."

Section 2. Section 26-906, R.C.M. 1947, is amended to read as follows:

"26-906. Outfitter and employees of outfitter equally responsible with others for violations of law--must report violations. Any person accompanying a hunting or fishing party as an outfitter or agent or employee of such outfitter shall be equally responsible with any person or party employing him as an outfitter for any violation of the law; any such outfitter or employee of such outfitter, who shall willfully fail to or refuse to report any violation of the law, shall be liable to the penalties as herein provided. If any professional guide commits any violation of the laws, or applicable regulations, relating to fish and game, outfitting or guiding with actual or implied knowledge of an outfitter then employing such guide, the outfitter is legally responsible for such violation for all purposes under the laws or regulations if the outfitter fails to report any such violation to proper authority.

No person may hire or retain any outfitter or professional guide unless the outfitter or professional guide is currently licensed in accordance with the laws of the state of Montana."

Section 3. Section 26-915, R.C.M. 1947, is amended to read as follows:

"26-915. Application for license—contents—requirements and qualifications—fees. (1) Each applicant for an outfitter's or professional guide's license shall make application for license upon a form to be prescribed and furnished by the fish and game commission which shall include:

(a) The applicant's full name, address and telephone number.

(b) The address of his principal place of business in the state of Montana.

(c) The amount and kind of property and equipment owned and used in the outfitting business of the applicant, if an outfitter's license application.

(d) The experience of the applicant, including years of experience as an outfitter or guide, knowledge of areas in which he has operated and intends to operate, and ability to cope with weather conditions and terrain.

(e) A signed statement of the licensed outfitter by whom the professional guide is to be employed, that the said

guide is in fact, to be employed by such outfitter and stating that said outfitter recommends the applicant for his qualifications.

(f) A statement by a Montana fish and game warden to the fish and game director that the equipment listed on the application has been inspected by said warden and that the same is in fact, owned or ~~used~~ leased by the applicant and is in good operating condition and is sufficient and satisfactory for the services advertised or contemplated to be performed by such applicant.

(g) A statement of the maximum number of guests to be taken at any one (1) time.

(h) Each new applicant who intends to outfit on a national forest must have the written approval of the rangers in whose district he will establish hunting camps, and such written approval shall accompany the application.

(i) ~~Each application for a partnership, company or corporation must be in the name of one individual who qualifies under the provisions of this act.~~ Applications for outfitter's license shall be in the name of an individual person only. Applications involving corporations or partnerships shall be made by one individual person who qualifies under the provisions of this act and any license issued pursuant thereto shall be in the name of that person and the license shall specifically state that the same is

issued for the use and benefit of the named corporation or partnership involved. Any revocation or suspension of such a license is binding upon the individual person and the partnership or corporation for the use and benefit of which the license was originally issued.

(2) Each applicant for, and holder of, an outfitter's license or any renewal thereof, shall, in the opinion of the director, meet the following ~~requirements~~ qualifications:

(a) ~~Be a competent person of good moral character.~~ Be a person of at least eighteen (18) years of age, in possession of all natural faculties, of ordinary intelligence and in such physical condition as to be able to perform his duties as an outfitter.

(b) Be a citizen of the United States and a resident of Montana for a full two (2) years, unless the residency requirement is waived by the fish and game commission.

~~(c) Be at least eighteen (18) years of age.~~

~~(d) Be in such physical condition as to be able to perform his assigned or obligated duties.~~

~~(e)~~ (c) To own or hold under written lease or to represent a company, corporation or partnership who owns or holds under written lease the equipment and facilities as is necessary to provide the services advertised, contracted for, or agreed upon between the outfitter and his clients. All equipment and facilities shall be subject to inspection

at all reasonable times and places by the fish and game commission or its designated agent.

(d) Be a person who has demonstrated a respect for, and compliance with, the laws of any state or of the United States and all regulations promulgated thereunder, especially as to matters of fish and game, conservation of natural resources and preservation of the natural ecosystem without pollution thereof.

(e) Have not been convicted, or forfeited bond, as to more than one (1) violation of the fish and game laws of any state or the United States.

(f) Have not, at any time, practiced fraud, deception or material misrepresentation in procuring any previous outfitter or guide's license from the state of Montana.

(g) Have not, at any time, promulgated any false or misleading advertising relating to the business of outfitting.

(h) Have not been finally adjudged by a court of law, guilty of any substantial breach of written or oral contract with any person utilizing the applicant's services as an outfitter or guide during the license year immediately preceding that for which the application is made.

(i) Have not committed any negligent act or misconduct while acting as an outfitter or guide which negligence or misconduct caused a danger or unreasonable risk of danger to

person or property of any client of such outfitter or guide during the license year immediately preceding that for which the application is made.

(j) Have not, at any time, been convicted of a felony unless civil rights have been restored pursuant to law. No person may apply for, or hold an outfitter's license during any period of time in which a deferred sentence has been imposed for a felony.

(k) Have substantially complied with all fish and game department regulations and state and federal laws concerning outfitters and guides, if the applicant has previously held a license as such outfitter or guide.

~~(2)~~ (l) Pass a standard examination administered by the fish and game director, or an agent designated by him, which said examination shall require general and sufficient knowledge displaying and indicating ability to perform the services contemplated with efficiency and with safety to the health and welfare of persons employing such services. The said examination shall test the applicant's knowledge of subjects which shall apply to the type of license applied for in the following subjects:

(i) Fish and game laws and regulations.

(ii) Practical woodsmanship.

(iii) General knowledge of big game.

(iv) Field preparation of trophies.

(v) Care of game meat.

(vi) Use of outfitter's gear as shown on the application.

(vii) Knowledge of area and terrain.

(viii) Knowledge of firearms.

(ix) Federal and state regulations as applicable to outfitting.

(x) Practical first aid.

(3) Each applicant for a professional guide's license shall meet the following requirements:

(a) ~~Be a competent person of good moral character.~~ Be a person of at least eighteen (18) years of age, in possession of all natural faculties, of ordinary intelligence and in such physical condition as to be able to perform his duties as a professional guide.

(b) Be a citizen of the United States and a resident of Montana as defined in this act.

~~(c) Be eighteen (18) years of age or older and in such physical condition as to be able to perform his assigned duties.~~

~~(d)~~ (c) Be endorsed and recommended by an outfitter with a valid license.

(4) A resident guide shall have been issued a valid resident wildlife conservation license.

(5) Residence requirements for procuring an outfitter's

license are hereby waived as to persons who are citizens of a common boundary state and of a common county thereof to the same extent the home state of the applicant waives such requirements for the residents of Montana except for fee.

For the purpose of obtaining a guide's license only, nonresident professional guides employed by resident outfitters shall be considered resident professional guides.

(6) Applications shall be made to and filed with the fish and game director and accompanied by a license fee as herein stipulated, which will be refunded if and when the application is denied. The fee is to be used in investigation of the applicant, in enforcement of this act, and for administrative costs.

Resident outfitter's license fee.....$ 50.00

Resident professional guide's fee.....$ 15.00

Resident guide's license is a valid Montana wildlife conservation license.

Nonresident outfitter's license fee.....$150.00

Nonresident professional guide's fee.....$100.00 Provided, however, that if the nonresident resides in a state requiring residents of the state of Montana to pay in excess of said

amounts for similar license, the fee for such nonresident outfitters or guides shall be the same amount as such higher fee charged in the state where such nonresident resides.

(7) The fish and game director in his discretion may cause to be made such additional investigation and inquiry, relative to the applicant for outfitter's license and an applicant's qualifications as he shall deem advisable. The director may deny or refuse to issue any new license or to renew any previous license if, in his opinion, the applicant does not meet the qualifications herein stated. In the event that any application for license is denied or refused, the director shall immediately notify the applicant setting forth in the notice the grounds upon which the denial or refusal is based. Final decision as to issuance of renewal applications shall be made not later than thirty (30) days from the date of receipt of the completed application for renewal of license, and upon a new application, not later than ninety (90) days from the date of receipt of the completed application for license. A licensee in good standing shall be entitled to a new license for the ensuing license year upon complying with the provisions of this section, but is exempt from having to retake the written examination.

(8) Only one (1) application for an outfitter or guide's license may be made any one (1) license year. If

any application is denied, subsequent applications by the same applicant for the license year involved are null and void.

Section 4. Section 26-916, R.C.M. 1947, is amended to read as follows:

"26-916. Kinds of license issued. (1) After receipt of the application and when all the conditions and requirements of this act have been satisfied, the fish and game director shall issue either of the following licenses depending upon his determination of the applicant's ability and the service that the applicant can perform with the equipment listed on his application.

(a) A general license authorizing him to perform all the functions of an outfitter as that term is defined in section 26-904, R.C.M., 1947.

(b) A special license authorizing him to perform only the function of outfitting listed on the license. The license shall be in the form prescribed, and shall be valid for the licensing year in which issued. If the application is denied, the fish and game director shall notify the applicant, in writing, of the reasons for the denial, and if the reasons are corrected, a license shall be issued upon reapplication thereof.

(2) For the purpose of this act, a person may serve as a professional guide under his employer's license after

submitting his application with the proper license fee until license is issued or for ten (10) days after notification of rejection of license.

(3) To be valid, a professional guide license must bear the signature and outfitter's license number of an endorsing outfitter and is valid only while the holder of such license is employed by an endorsing outfitter.

(4) No outfitter license may be transferred during any license year, provided that an individual person may, upon proper showing, have his outfitter's license amended to indicate that he is holding such license for the use and benefit of a named partnership or corporation.

(5) No person may hold more than one (1) outfitter's license either for his own benefit or for the use and benefit of a partnership or corporation nor may the name of any partnership or corporation appear on more than one (1) current outfitter's license.

(6) Notwithstanding any other provision or law a license shall expire on the last day of the license year for which it was issued."

Section 5. Section 26-918, R.C.M. 1947, is amended to read as follows:

"26-918. Grounds for suspension or revocation of license. Every license, or right to apply for and hold such license, may be suspended or revoked by the fish and game

commission upon any of the following grounds:

(1) Having ceased to meet all of the qualifications for holding a license.

~~(1)~~ (2) Fraud or deception in procuring a license.

~~(2)~~ (3) Fraudulent, untruthful or misleading advertising.

~~(3)~~ (4) Conviction of a felony, until civil rights are restored or until time of any deferred sentence for a felony has expired.

~~(4)~~ (5) ~~Repeated~~ two (2) convictions, or bond forfeitures, ~~of~~ as to violations of the fish and game or outfitting laws or regulations of the state of Montana or of the United States.

~~(5)~~ (6) A substantial breach of any ~~written~~ contract with any person utilizing ~~his~~ the services of the license holder ~~as pertains to this act~~ provided that such breach is established as a matter of final judgment in a court of law.

~~(6)~~ (7) The willful ~~and repeated~~ employment of an unlicensed guide by an outfitter.

~~(7) For failure to comply with the provisions of this act.~~

(8) ~~Gross~~ Negligence or misconduct while acting as an outfitter or guide which negligence or misconduct causes a danger or unreasonable risk of danger to person or property of any client of such outfitter or guide."

Section 6. Section 26-919, R.C.M. 1947, is amended to read as follows:

"26-919. Procedure for revocation or suspension of license. Proceedings for the revocation or suspension of a license issued hereunder may be taken upon charge or recommendation of any person. All such charges or recommendations must be made in writing, must state the facts upon which such charge or recommendation is based and must be signed and sworn to by the person making the charge or recommendation. Any such charge or recommendation shall be filed with the fish and game director. Thereupon, the fish and game director shall initiate a preliminary investigation of all facts in connection with the charge. A copy of all information shall be transmitted to the advisory council. ~~The advisory council shall within sixty (60) days recommend the action to be taken.~~ The advisory council may make recommendation as to the action to be taken provided that any such recommendation shall be made, in writing and delivered to the director, within twenty (20) days after date of transmittal of such information to the council. If the accusation be deemed to be unfounded or trivial, the fish and game director shall dismiss the same and report his action to the fish and game commission and will advise the ~~accused~~ licensee charged and the complaining party of the action. Should the fish and game director determine the

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charge or recommendation to have good cause and to be sufficiently founded, he shall recommend to the fish and game commission that the same be approved and the revocation or suspension be effected. The fish and game director thereupon shall cause a copy of the charge, recommendation of the council, and a record of the investigation to be served upon the licensee involved, not less than twenty (20) days prior to the day set for hearing thereon which said hearing shall be before the fish and game commission at a time and place set by such commission. At the hearing the licensee involved may be represented by counsel. After full, fair and impartial hearing, the fish and game commission may suspend the accused's license or his right to hold a license for a period not to exceed three (3) years or may order the license revoked or may dismiss the charge or recommendation based upon the facts shown at the hearing. A revoked or suspended license may be reissued or reinstated at the discretion of the commission."

Section 7. Section 26-920, R.C.M. 1947, is amended to read as follows:

"26-920. Appeal to district court. Any person who feels aggrieved by any action of the ~~fish and game commission~~ director in denying the issuance of a license, ~~or the suspension or revocation of~~ or of the fish and game commission in suspending or revoking his license as an

outfitter or guide, may appeal to the district court of the county of his residence, within ~~sixty (60)~~ thirty (30) days after the ~~entry of the order~~ date of such action by filing with the clerk of said court a notice of appeal briefly setting forth the action complained of and appealed from. Summons and copy of the notice of appeal shall be served on the commission and all proceedings shall conform to the code of civil procedure of the state of Montana. Upon such appeal, the action shall be by trial de novo and, upon demand in writing, either party shall be entitled to trial by jury. The court may sustain or reverse the action of the commission or take such other action as the court may deem just and proper. If the commission or the court has ordered a stay of any revocation or suspension and the commission's revocation or suspension is thereafter sustained by the court the period of suspension or revocation shall begin with the first day after the court's action sustaining the decision of the commission."

Section 8. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

-End-

In closing Mr. Woodgerd said the people here are against the amendments made by the Senate. There is another amendment which was submitted by Mr. Berger which might take care of these objections. Two outfitters said they oppose the bill whether it is amended or not.

Mr. Erskine from Missoula, representing the Western Montana Fish and Game Association, said the Association wrote the bill. The object is to try and preserve the fish and game in the state.

Mr. Woodgerd said the reason House bill 270 was not included when drawing up the budget items was because it was introduced after the budget was compiled. If House Bill 603 passes and the wardens are transferred to the Department of Justice, he does not know what will happen to the Department's budget. This bill will not keep out non-resident hunters because the other costs involved in a hunting trip are much higher than the license fees. The Department does not know the percentage of non-resident hunters who hunt without a guide, they estimate around 50%. As far as we know, the estimated revenue under this bill would increase $700,000 in 1976. The Wildlife Management Institute suggested a ratio of 1 non-resident hunter to 5 resident hunters, and 1 non-resident fisherman to 3 resident fishermen. The Fish and Game Department has 314 permanent employees (as listed on the proposed pay plan) and of that 96 are wardens, 64 of them in the field.

Senate Bill 397 was discussed next. Senator Murphy, chief sponsor, said the bill was submitted at the request of outfitters and guides.

Clayton Herron, attorney for the Fish and Game Commission, explained the provisions of the bill. Section 1 - defines the profession of outfitting; Section 2 - makes outfitters responsible for the conduct of guides who work for them; Section 3 - controls those applying for an outfitters license; Section 4 - clarification of existing law regarding the transfer of licenses; Section 5 - clarifies present language regarding breach of contract; Section 6 - provides a procedure for revocation or suspension of license; Section 7 - clarifies appeal procedure.

Ralph Holman submitted the attached proposed amendment to the bill and said if it was so amended, he would support it. Mr. C. B. Rich and Paul Christiansen agreed with that statement and amendment.

Senator Murphy requested the committee to amend page 6, line 6, by striking "especially". He said that the proposed amendment to page 2, lines 10 through 18 are present law and cannot be

repealed with this bill because it is outside the scope of the bill title. The rest of section 2 could be striken because it is covered in the title. However, in most industries now, the employer is responsible for the actions of his employees while they are engaged in doing his business. The provisions on page 6, lines 9 through 12 are constitutional because they would apply only previous to the time a person had his civil rights restored. Page 10, line 5 provides recourse to the courts if an outfitter thinks he received an arbitrary decision from the Fish and Game Department.

There being no further business, the meeting adjourned at 12:05 p.m.

John B. Staigmiller

JOHN B. STAIGMILLER, Chairman

THE 33 RANCH
McLEOD, MONTANA 59052

March 5, 1975

House of Representatives
Fish and Game Committee
John B. Staigmiller, Chairman

Gentlemen:

I have been asked to make this presentation on behalf of the Outfitters of Montana. I am one of the group that composed the original Outfitter law and the proposed ammendments. The contents of Senate Bill 397 was compiled without sufficient time for the Outfitter Council members to analize and make changes desired. We want stringent regulations but we also want fair and reasonable regulations that are equally applied to all.

We ask that Senate Bill 397 be ammended as follows;

A. Page; 2 section 26-906
Delete lines 10 through 25

1 At the time we included the equal responsibility section, the Non Resident was also required to be accompanied by an outfitter, guide or Resident friend and it was felt that if he was required by to be accompanied then we should accept responsibility for him.

2. Now that he is not required to be accompanied, he does not have to employ an outfitter and the requirements that we report him is a red flag that alerts him to the fact that if he hunts with a legal and licensed outfitter he will be reported but if he hunts with an unlicensed outfitter or a friend or alone he will not be reported, this will discourage him from booking with a licensed outfitter.

3. The stigma attached to this regulation spells out that an outfitter is required by law to be a stool pigeon.

4. Implied knowledge indicates that we are supposed to know everything that happens, this is impossible.

5. No other industry has a law of this type, Doctors, Lawyers, Merchants etc.

6/ Individuals hunting toghther are not required to report on each other, two outfitters hunting ltogether are not required to report on each other.

7. Smorgasboard set up in S. B. 236 as proposed by the Department will encourage a party of six to hunt with 2 deer tags, 2 elk tags and 2 bear tags and we will be required to police them to assure that one hunter doesn't shoot the other guys game. We are asked to do the Wardens job without authority.

8. Would you want to be responsible, along with your guest for his actions that you may or may not have knowledge of?

9. This is tantamount to being required to turn in a driver of a car who passed you at excessive speeds.

10. If a guest walked out of the tent or cabin with a gun in his hand to go hunting and failed to have his lhunter orange on, he would be in violation if he were only a few feet away but the outfitter would have to report him or be held equally responsibl This could be a good friend, a son or a brother.

11. We believe that if we violate the law that we should b cited but not for someone else. The large majority of outfitters conduct a highly ethical and prudent business while offering an important and much needed service to the public and there are few businesses that have imposed the stringent regulations onto themselves that we have, and we don't feel that the equal responsibility section is necessary. It will encourage clients to shy away from our services.

12. We have had legislators tell us that we must have had rocks in our head to put it in our law.

13. The Criminal Code of Montana page 22 and 23 section 94-2-106, accountability for the conduct of another, and 94-2-107 when accountability exists provides that if you participate in an unlawful act you are an accomlice and if you cover up an unlawful act you are aiding and abetting. If we dress out or pack out an illegal animal with knowledge, we are an accomplice and if we attemp to conceal we are aiding and abetting. The Game Warden would have to prove knowledge or participation and this is as it should be, why then do we need equal responsibility, which is definately unfair to the outfitter and discrimminatory.

B. Page 6 line 6
delete the word "especially"

With the word left in an outfitter could lhave a speeding ticket used against him that he redieved bauk in New Jersey. With th word deleted the entire sub section will only pertain to Fish and Game, conservation and pollution, violations as it should.

Ralph Holman

Ralph Holman
for Outfitters of Montana

AME C. B. Keck Bill No. SB397

DDRESS Darby, Lake, Mont. Date 3/5/75

HOM DO YOU REPRESENT? Mont. Outfitter Council Montana Outfitters and Guide Associations

UPPORT ✓ OPPOSE _____ AMEND ✓

LEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

omments:

I support SB397, but would request an amendment to make the equal responsibility section on page 2 lines 19 through 25.

EB 13

NAME Frank E. Christensen Bill No. 317

ADDRESS 63 Ranch Living to wait Date 3/6/75

WHOM DO YOU REPRESENT? Self

SUPPORT _____ OPPOSE _____ AMEND X

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

I oppose AB 317 in its present form but may not oppose if it is amended by deleting Sec. 2.6-76 lines 10 - through 21

NAME Teddy Thompson S.B. Bill No. 377

ADDRESS Big Timber Date 3-5-75

WHOM DO YOU REPRESENT? Myself

SUPPORT _____ OPPOSE _____ AMEND X

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

Delete in Sec 26-906 lines 10 through 25.

FISH AND GAME COMMITTEE

March 12, 1975

The meeting was called to order at 10:30 a.m., with all members present.

Senate Bill 279 was discussed. Senator Roberts, chief sponsor, was not present but had asked Mr. Fletcher Newby to present the bill. Mr. Newby read the attached statement and presented the attached letter in support of his testimony.

Rep. Seifert moved that Senate Bill 279 BE CONCURRED IN. The motion was seconded and passed unanimously.

The Committee discussed Senate Bill 397. A proposed amendment to strike the word "especially" on page 6 line 6 was considered. Rep. Lien moved to leave this part of the bill as written. A vote was not taken, but the committee agreed to this motion by voice. Subsection (e) on page 6 was considered. After some discussion, Rep. Conroy moved to amend line 12 at the end of the sentence by adding "within the last 10 years." He amended his motion to "5 years." Rep. Baeth made a substitute motion not to adopt the motion. The substitute motion failed with Reps. Conroy, Asher, Lien, Johnston, Staigmiller and Ellison voting NO, Reps. Manuel, Baeth, Gwynn, Seifert and Wyrick voting YES. The original motion to amend the bill to say "5 years" was voted on and passed with Reps. Conroy, Asher, Lien, Johnston, Staigmiller and Ellison voting YES, Reps. Manuel, Baeth, Gwynn, Seifert and Wyrick voting NO.

Rep. Lien then moved that Senate bill 397 BE CONCURRED IN AS AMENDED. The motion was seconded and passed with Rep. Seifert voting NO, all others voting YES.

Rep. Johnston moved to table Senate Bill 236. The motion was seconded and passed unanimously.

There being no further business, the meeting adjourned at 11:10 a.m.

Lee M. Thorneville

MINUTES OF THE MEETING
NATURAL RESOURCES AND FISH & GAME
MONTANA STATE SENATE

February 18, 1975

The thirteenth meeting of the Natural Resources and Fish & Game Committee was called to order by Chairman Elmer Flynn at 9:30 a.m., Room 405, in the State Capitol Building.

ROLL CALL: All members were present.

CONSIDERATION OF SB 397: Relating to the licensing and regulation of outfitting and guiding of hunting and fishing parties within the state of Montana.

Senator Terry Murphy, sponsor, said introduction of the bill was requested by the Montana Outfitters and guides. He said that the attorney who drafted most of the bill had a recent accident and would be unable to attend today's meeting in order to point out some of the legal technicality.

Mr. Joe Gaab, supervisor of the Montana Outfitters, offered some amendments to the bill. This bill does not cast any reflection on those who hunt with additional friends.

All the Outfitters present at the meeting briefly testified before the committee in support of SB 397.

Senator Manley asked if the bill curtailed anyone else to get a license. One of the witnesses said a person could obtain a license as long as they qualify.

Senator Flynn asked if under the constitution, a license could be denied from a former offense. Senator Lynch, an attorney, said a license could not be denied under a former offense.

CONSIDERATION OF SB 349: An act including replacement costs as an element of the award in an eminent domain proceeding.

Senator Lynch, sponsor, said because the right section was excluded when the bill was drafted, he was preparing a new section. This legislation will require the plantiff to pay replacement costs to the defendant in addition to any and all other payments he may be required to make.

One of the opponents of the legislation, Bill Sternhagen of the Anaconda Company, said that most of the defendants receive market value and just compensation for their land.

Mr. Bill Romine, Montana Mining Association, commented that because material has risen so drastically in the last few years, it would cost quite a bit of money to rebuild an old home.

homes. Property taxes present a problem in that when people move into another area, the company has to provide them with money to pay much higher property taxes, in most cases, for the next 5 to 10 years.

CONSIDERATION OF SB 350: To allow certain parties to participate in proceedings conducted pursuant to the reclamation of mining lands act.

Mr. Bill Romine, Montana Mining Association, testified in opposition of this bill because he feels it is far too broad. (See Attachment #1.)

Mr. Largey McDonald also opposes SB 350.

Senator Lynch, sponsor, said he didn't approve of the way the bill was drafted by the Legislative Council.

Senator Smith wanted to know if the ranchers were protected by other laws other than this. Senator Lynch said he was sure they were.

DISPOSITION OF SB 350: Senator Manley moved that the amendments the committee discussed to this bill, be adopted. Senator Smith seconded the motion and it carried unanimously. (See standing committee report.) Senator Colberg moved that the second amendment be adopted. Senator Watt seconded the motion with Senators Roskie and Galt voting against. The motion carried. (See standing committee report.) Senator Watt further moved that SB 350 AND AS SO AMENDED, DO PASS. The motion was seconded by Senator Roskie; it carried unanimously.

CONSIDERATION OF SB 349: Senator Colberg felt that the limit on open pit mining wasn't fair. Why not include strip mining also in the bill? Senator Flynn felt, too, that our eminent domain laws were unfair. Senator Manley didn't approve of the amendment proposed by Senator Lynch. Replacement costs should inlude the entire state. Senator Colberg suggested that action on this bill be deferred just before the transmittal date. He wants to see what happens to a similar bill now in the House.

DISPOSITION OF SB 397: Senator Watt moved that the proposed amendments be adopted to SB 397. (See standing committee report.) The motion was seconded by Senator Colberg; it carried unanimously. Senator Manley moved that SB 397 AND AS SO AMENDED, DO PASS. The motion was seconded by Senator Smith; it carried unanimously.

DISPOSITION OF SB 277: Senator Smith, sponsor, issued amendments to the bill. These amendments spell out the condition so that landowners cannot demand royalty. It was Senator Galt's opinion that the bill still jeopardizes the state's mineral rights. He said that most of the oil drillings in his part of the state have been compensated for and sees no need of the bill.

February 18, 1975

PRESIDENT:

/our committee on NATURAL RESOURCES AND FISH & GAME

id under consideration SENATE Bill No. 397

tfully report as follows: That SENATE Bill No. 397,

roduced bill, be amended as follows:

Amend page 6, Section 3, line 9.
Following: "bond,"
Strike: "as to"
Insert: "of one hundred dollars ($100) or more on"

Amend page 13, Section 5, line 11.
Following: "forfeitures,"
Insert: "of one hundred dollars ($100) or more"

S SO AMENDED, DO PASS

ES"

SENATE BILL NO. 397

INTRODUCED BY MURPHY (BY REQUEST)

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTIONS 26-904, 26-906, 26-915, 26-916, 26-918, 26-919 AND 26-920, R.C.M. 1947, RELATING TO THE LICENSING AND REGULATION OF OUTFITTING AND GUIDING OF HUNTING AND FISHING PARTIES WITHIN THE STATE OF MONTANA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 26-904, R.C.M. 1947, is amended to read as follows:

"26-904. Who deemed outfitter. For the purpose of this act, the word "outfitter" shall mean any person or persons, company or corporation who shall engage in the business of outfitting for hunting or fishing parties, as the term is commonly understood, who shall for consideration provide any saddle or pack animal or animals or personal service for hunting or fishing parties, camping equipment, vehicles or other conveyance except boats for any person or persons to hunt, trap, capture, take or kill any game, or who shall for consideration furnish a boat or other floating craft and accompany any person or persons for the purpose of catching fish, or who shall aid or assist any person or persons in locating or pursuing any game animal. The providing of the

REFERENCE BILL

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above mentioned services, property or equipment shall be conclusively presumed to have been for consideration for purposes of this act if the same, or any thereof, are provided by any person, company or corporation for more than two (2) parties or two (2) other persons during any calendar year or on more than two (2) occasions during any such calendar year."

Section 2. Section 26-906, R.C.M. 1947, is amended to read as follows:

"26-906. Outfitter and employees of outfitter equally responsible with others for violations of law--must report violations. Any person accompanying a hunting or fishing party as an outfitter or agent or employee of such outfitter shall be equally responsible with any person or party employing him as an outfitter for any violation of the law; any such outfitter or employee of such outfitter, who shall willfully fail to or refuse to report any violation of the law, shall be liable to the penalties as herein provided. If any professional guide commits any violation of the laws, or applicable regulations, relating to fish and game, outfitting or guiding with actual or implied knowledge of an outfitter then employing such guide, the outfitter is legally responsible for such violation for all purposes under the laws or regulations if the outfitter fails to report any such violation to proper authority.

No person may hire or retain any outfitter or professional guide unless the outfitter or professional guide is currently licensed in accordance with the laws of the state of Montana."

Section 3. Section 26-915, R.C.M. 1947, is amended to read as follows:

"26-915. Application for license -- contents -- requirements and qualifications--fees. (1) Each applicant for an outfitter's or professional guide's license shall make application for license upon a form to be prescribed and furnished by the fish and game commission which shall include:

(a) The applicant's full name, address and telephone number.

(b) The address of his principal place of business in the state of Montana.

(c) The amount and kind of property and equipment owned and used in the outfitting business of the applicant, if an outfitter's license application.

(d) The experience of the applicant, including years of experience as an outfitter or guide, knowledge of areas in which he has operated and intends to operate, and ability to cope with weather conditions and terrain.

(e) A signed statement of the licensed outfitter by whom the professional guide is to be employed, that the said

guide is in fact, to be employed by such outfitter and stating that said outfitter recommends the applicant for his qualifications.

(f) A statement by a Montana fish and game warden to the fish and game director that the equipment listed on the application has been inspected by said warden and that the same is in fact, owned or ~~used~~ leased by the applicant and is in good operating condition and is sufficient and satisfactory for the services advertised or contemplated to be performed by such applicant.

(g) A statement of the maximum number of guests to be taken at any one (1) time.

(h) Each new applicant who intends to outfit on a national forest must have the written approval of the rangers in whose district he will establish hunting camps, and such written approval shall accompany the application.

(i) ~~Each application for a partnership, company or corporation must be in the name of one individual who qualifies under the provisions of this act.~~ Applications for outfitter's license shall be in the name of an individual person only. Applications involving corporations or partnerships shall be made by one individual person who qualifies under the provisions of this act and any license issued pursuant thereto shall be in the name of that person and the license shall specifically state that the same is

issued for the use and benefit of the named corporation or partnership involved. Any revocation or suspension of such a license is binding upon the individual person and the partnership or corporation for the use and benefit of which the license was originally issued.

(2) Each applicant for, and holder of, an outfitter's license or any renewal thereof, shall, in the opinion of the director, meet the following ~~requirements~~ qualifications:

(a) ~~Be-a-competent-person-of-good-moral-character.~~ Be a person of at least eighteen (18) years of age, in possession of all natural faculties, of ordinary intelligence and in such physical condition as to be able to perform his duties as an outfitter.

(b) Be a citizen of the United States and a resident of Montana for a full two (2) years, unless the residency requirement is waived by the fish and game commission.

~~(c)-Be-at-least-eighteen-(18)-years-of-age.~~

~~(d)-Be-in-such-physical-condition--as--to--be--able--to perform-his-assigned-or-obligated-duties.~~

~~(e)~~ (c) To own or hold under written lease or to represent a company, corporation or partnership who owns or holds under written lease the equipment and facilities as is necessary to provide the services advertised, contracted for, or agreed upon between the outfitter and his clients. All equipment and facilities shall be subject to inspection

at all reasonable times and places by the fish and game commission or its designated agent.

(d) Be a person who has demonstrated a respect for, and compliance with, the laws of any state or of the United States and all regulations promulgated thereunder, especially as to matters of fish and game, conservation of natural resources and preservation of the natural ecosystem without pollution thereof.

(e) Have not been convicted, or forfeited bond, ~~as--to~~ OF ONE HUNDRED DOLLARS ($100) OR MORE ON more than one (1) violation of the fish and game laws of any state or the United States WITHIN THE PAST FIVE (5) YEARS.

(f) Have not, at any time, practiced fraud, deception or material misrepresentation in procuring any previous outfitter or guide's license from the state of Montana.

(g) Have not, at any time, promulgated any false or misleading advertising relating to the business of outfitting.

(h) Have not been finally adjudged by a court of law, guilty of any substantial breach of written or oral contract with any person utilizing the applicant's services as an outfitter or guide during the license year immediately preceding that for which the application is made.

(i) Have not committed any negligent act or misconduct while acting as an outfitter or guide which negligence or

misconduct caused a danger or unreasonable risk of danger to person or property of any client of such outfitter or guide during the license year immediately preceding that for which the application is made.

(j) Have not, at any time, been convicted of a felony unless civil rights have been restored pursuant to law. No person may apply for, or hold an outfitter's license during any period of time in which a deferred sentence has been imposed for a felony.

(k) Have substantially complied with all fish and game department regulations and state and federal laws concerning outfitters and guides, if the applicant has previously held a license as such outfitter or guide.

~~(f)~~ (l) Pass a standard examination administered by the fish and game director, or an agent designated by him, which said examination shall require general and sufficient knowledge displaying and indicating ability to perform the services contemplated with efficiency and with safety to the health and welfare of persons employing such services. The said examination shall test the applicant's knowledge of subjects which shall apply to the type of license applied for in the following subjects:

(i) Fish and game laws and regulations.

(ii) Practical woodsmanship.

(iii) General knowledge of big game.

(iv) Field preparation of trophies.

(v) Care of game meat.

(vi) Use of outfitter's gear as shown on the application.

(vii) Knowledge of area and terrain.

(viii) Knowledge of firearms.

(ix) Federal and state regulations as applicable to outfitting.

(x) Practical first aid.

(3) Each applicant for a professional guide's license shall meet the following requirements:

(a) ~~Be a competent person of good moral character.~~ Be a person of at least eighteen (18) years of age, in possession of all natural faculties, of ordinary intelligence and in such physical condition as to be able to perform his duties as a professional guide.

(b) Be a citizen of the United States and a resident of Montana as defined in this act.

~~(c) Be eighteen (18) years of age or older and in such physical condition as to be able to perform his assigned duties.~~

~~(d)~~ (c) Be endorsed and recommended by an outfitter with a valid license.

(4) A resident guide shall have been issued a valid resident wildlife conservation license.

(5) Residence requirements for procuring an outfitter's license are hereby waived as to persons who are citizens of a common boundary state and of a common county thereof to the same extent the home state of the applicant waives such requirements for the residents of Montana except for fee.

For the purpose of obtaining a guide's license only, nonresident professional guides employed by resident outfitters shall be considered resident professional guides.

(6) Applications shall be made to and filed with the fish and game director and accompanied by a license fee as herein stipulated, which will be refunded if and when the application is denied. The fee is to be used in investigation of the applicant, in enforcement of this act, and for administrative costs.

Resident outfitter's license fee.....$ 50.00

Resident professional guide's fee.....$ 15.00

Resident guide's license is a valid Montana wildlife conservation license.

Nonresident outfitter's license fee.....$150.00

Nonresident professional guide's fee.....$100.00

Provided, however, that if the nonresident resides in a state requiring residents of the state of Montana to pay in excess of said amounts for similar license, the fee for such nonresident outfitters or guides shall be the same amount as such higher fee charged in the state where such nonresident

resides.

(7) The fish and game director in his discretion may cause to be made such additional investigation and inquiry, relative to the applicant for outfitter's license and an applicant's qualifications as he shall deem advisable. The director may deny or refuse to issue any new license or to renew any previous license if, in his opinion, the applicant does not meet the qualifications herein stated. In the event that any application for license is denied or refused, the director shall immediately notify the applicant setting forth in the notice the grounds upon which the denial or refusal is based. Final decision as to issuance of renewal applications shall be made not later than thirty (30) days from the date of receipt of the completed application for renewal of license, and upon a new application, not later than ninety (90) days from the date of receipt of the completed application for license. A licensee in good standing shall be entitled to a new license for the ensuing license year upon complying with the provisions of this section, but is exempt from having to retake the written examination.

(8) Only one (1) application for an outfitter or guide's license may be made any one (1) license year. If any application is denied, subsequent applications by the same applicant for the license year involved are null and

void.

Section 4. Section 26-916, R.C.M. 1947, is amended to read as follows:

"26-916. Kinds of license issued. (1) After receipt of the application and when all the conditions and requirements of this act have been satisfied, the fish and game director shall issue either of the following licenses depending upon his determination of the applicant's ability and the service that the applicant can perform with the equipment listed on his application.

(a) A general license authorizing him to perform all the functions of an outfitter as that term is defined in section 26-904, R.C.M., 1947.

(b) A special license authorizing him to perform only the function of outfitting listed on the license. The license shall be in the form prescribed, and shall be valid for the licensing year in which issued. If the application is denied, the fish and game director shall notify the applicant, in writing, of the reasons for the denial, and if the reasons are corrected, a license shall be issued upon reapplication thereof.

(2) For the purpose of this act, a person may serve as a professional guide under his employer's license after submitting his application with the proper license fee until license is issued or for ten (10) days after notification of

rejection of license.

(3) To be valid, a professional guide license must bear the signature and outfitter's license number of an endorsing outfitter and is valid only while the holder of such license is employed by an endorsing outfitter.

(4) No outfitter license may be transferred during any license year, provided that an individual person may, upon proper showing, have his outfitter's license amended to indicate that he is holding such license for the use and benefit of a named partnership or corporation.

(5) No person may hold more than one (1) outfitter's license either for his own benefit or for the use and benefit of a partnership or corporation nor may the name of any partnership or corporation appear on more than one (1) current outfitter's license.

(6) Notwithstanding any other provision or law a license shall expire on the last day of the license year for which it was issued."

Section 5. Section 26-918, R.C.M. 1947, is amended to read as follows:

"26-918. Grounds for suspension or revocation of license. Every license, or right to apply for and hold such license, may be suspended or revoked by the fish and game commission upon any of the following grounds:

(1) Having ceased to meet all of the qualifications

for holding a license.

~~(1)~~ (2) Fraud or deception in procuring a license.

~~(2)~~ (3) Fraudulent, untruthful or misleading advertising.

~~(3)~~ (4) Conviction of a felony, until civil rights are restored or until time of any deferred sentence for a felony has expired.

~~(4)~~ (5) ~~Repeated~~ Two (2) convictions, or bond forfeitures, OF ONE HUNDRED DOLLARS ($100) OR MORE ~~of~~ as to violations of the fish and game or outfitting laws or regulations of the state of Montana or of the United States.

~~(5)~~ (6) A substantial breach of any ~~written~~ contract with any person utilizing ~~his~~ the services of the license holder ~~as-pertains-to-this-act~~ provided that such breach is established as a matter of final judgment in a court of law.

~~(6)~~ (7) The willful ~~and--repeated~~ employment of an unlicensed guide by an outfitter.

~~(7)--For--failure-to-comply-with-the-provisions-of-this act.~~

(8) ~~Gross-negligence~~ Negligence or misconduct while acting as an outfitter or guide which negligence or misconduct causes a danger or unreasonable risk of danger to person or property of any client of such outfitter or guide."

Section 6. Section 26-919, R.C.M. 1947, is amended to

read as follows:

"26-919. Procedure for revocation or suspension of license. Proceedings for the revocation or suspension of a license issued hereunder may be taken upon charge or recommendation of any person. All such charges or recommendations must be made in writing, must state the facts upon which such charge or recommendation is based and must be signed and sworn to by the person making the charge or recommendation. Any such charge or recommendation shall be filed with the fish and game director. Thereupon, the fish and game director shall initiate a preliminary investigation of all facts in connection with the charge. A copy of all information shall be transmitted to the advisory council. ~~The--advisory-council-shall-within-sixty-(60)-days recommend-the-action-to-be-taken.~~ The advisory council may make recommendation as to the action to be taken provided that any such recommendation shall be made, in writing and delivered to the director, within twenty (20) days after date of transmittal of such information to the council. If the accusation be deemed to be unfounded or trivial, the fish and game director shall dismiss the same and report his action to the fish and game commission and will advise the ~~accused~~ licensee charged and the complaining party of the action. Should the fish and game director determine the charge or recommendation to have good cause and to be

sufficiently founded, he shall recommend to the fish and game commission that the same be approved and the revocation or suspension be effected. The fish and game director thereupon shall cause a copy of the charge, recommendation of the council, and a record of the investigation to be served upon the licensee involved, not less than twenty (20) days prior to the day set for hearing thereon which said hearing shall be before the fish and game commission at a time and place set by such commission. At the hearing the licensee involved may be represented by counsel. After full, fair and impartial hearing, the fish and game commission may suspend the accused's license or his right to hold a license for a period not to exceed three (3) years or may order the license revoked or may dismiss the charge or recommendation based upon the facts shown at the hearing. A revoked or suspended license may be reissued or reinstated at the discretion of the commission."

Section 7. Section 26-920, R.C.M. 1947, is amended to read as follows:

"26-920. Appeal to district court. Any person who feels aggrieved by any action of the ~~fish--and--game commission~~ director in denying the issuance of a license, ~~or the-suspension-or-revocation-of~~ or of the fish and game commission in suspending or revoking his license as an outfitter or guide, may appeal to the district court of the

county of his residence, within ~~sixty-(60)~~ thirty (30) days after the ~~entry-of-the-order~~ date of such action by filing with the clerk of said court a notice of appeal briefly setting forth the action complained of and appealed from. Summons and copy of the notice of appeal shall be served on the commission and all proceedings shall conform to the code of civil procedure of the state of Montana. Upon such appeal, the action shall be by trial de novo and, upon demand in writing, either party shall be entitled to trial by jury. The court may sustain or reverse the action of the commission or take such other action as the court may deem just and proper. If the commission or the court has ordered a stay of any revocation or suspension and the commission's revocation or suspension is thereafter sustained by the court the period of suspension or revocation shall begin with the first day after the court's action sustaining the decision of the commission."

Section 8. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

-End-